

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

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|---------------------------------|---|--------------------|
| VICKI M. HARVEY |) | |
| Claimant |) | |
| VS. |) | |
| |) | Docket No. 187,637 |
| HERTZLER CLINIC, P.A. |) | |
| Respondent |) | |
| AND |) | |
| |) | |
| DODSON INSURANCE COMPANY |) | |
| Insurance Carrier |) | |

ORDER

Respondent appeals from an Order for payment of claimant's attorney fees on a post-award application for additional medical treatment. The Appeals Board heard oral argument March 3, 1999.

APPEARANCES

Robert R. Lee of Wichita, Kansas, appeared on behalf of claimant. Stephen J. Jones of Wichita, Kansas, appeared on behalf of respondent and its insurance carrier.

ISSUES

The Administrative Law Judge ordered respondent and its insurance carrier to pay claimant's counsel \$1,000 in attorney fees for services in connection with a post-award application for additional medical benefits. Respondent contends the amount of the fees is excessive. Respondent also contends it is entitled to a hearing on the question of attorney fees.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes the award of attorney fees should be affirmed.

At the beginning of the May 14, 1998, hearing on the post-award application for medical benefits, claimant's counsel advised he was also asking for attorney fees under K.S.A. 44-536(g). The ALJ then advised claimant's counsel to submit an affidavit regarding those fees and advised both parties that if there were no complaints after he received the affidavit, he would order fees based on the affidavit.

Claimant's counsel submitted an affidavit under cover of a letter dated July 15, 1998, with a copy to respondent's counsel. The affidavit reflected 15.2 hours for which claimant's counsel requested \$125 per hour in the total amount of \$1,900. On July 27, 1998, claimant's counsel sent a second letter asking whether it could expect a ruling on the request. Respondent did not at any time object to the amount of the fees or request a hearing. On July 29, 1998, the ALJ entered an Order for \$1,000 in fees, substantially less than the amount requested.

The Board concludes that by failing to make an objection, respondent waived its right to a hearing. The Board also finds the amount of the fees awarded to be reasonable. The Order for \$1,000 in fees is affirmed.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order entered by Administrative Law Judge Bruce E. Moore on July 29, 1998, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of March 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Robert R. Lee, Wichita, KS
Stephen J. Jones, Wichita, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director